

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

<b>STATE OF OKLAHOMA, et al.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	Case No. 05-cv-329-GKF-SH
	)	
<b>TYSON FOODS, INC., et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

**The State of Oklahoma’s Motion in Limine to Exclude  
Defendants’ Expert Jennifer Benaman**

Pursuant to Federal Rules of Civil Procedure 26(a) and 37(c), the State moves to exclude Defendants’ expert Jennifer Benaman due to Defendants’ failure to produce an expert report by the Court-ordered deadline of November 18, 2024. *See* Sept. 13, 2024 Minute Order, Dkt. 3038.

On November 18, 2024, Defendants disclosed the identity of six expert witnesses, including Jennifer Benaman, and produced four expert reports.<sup>1</sup> *See* Dkt. 3059. Defendants, however, did not provide Ms. Benaman’s expert report nor did they provide any summary of Ms. Benaman’s expected testimony. The State reached out to counsel for Defendants requesting Ms. Benaman’s expert report. Counsel for Defendants however, simply stated that “Dr. Benaman works with Dr. Connolly. There is no separate Benaman report as of yet.” (Ex. 1, Nov. 19 correspondence between Jennifer Lewis and Gordon Todd).

Rule 26(a)(2)<sup>2</sup> requires litigants to disclose all expert opinions and related materials that may be used at trial and to make such disclosures at the times directed by the court. Fed. R. Civ.

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<sup>1</sup> Two of Defendants’ disclosed experts are co-authors of a report, and it is believed that Defendants intend to call both as witnesses at the December hearing.

<sup>2</sup> Rule 26(a)(2)(B) requires that expert reports contain “(i) a complete statement of all opinions the witness will express and the basis and reasons for them; (ii) the facts or data considered by the witness in forming them; (iii) any exhibits that will be used

P. 26(a)(2)(B) & (D). Where a party fails to make timely disclosures under Rule 26(a), “the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless.” Fed. R. Civ. P. 37(c). “The combined effect of Rule 26(a)(2)(B) and 37(c)(1) is that he who fails to provide a comprehensive expert report does so at his peril.” *Anderson v. Hale*, 2002 U.S. Dist. LEXIS 28281 at \*5, 2002 WL 32026151 at \*2 (W.D. Okla., Nov. 4, 2002)(not reported in F.Supp.2d).

Here, Defendants have offered no reason whatsoever as to why they have failed to provide an expert report for Ms. Benaman, with only a vague implication that her expert report may be forthcoming. Accordingly, for the reasons stated herein, Defendants should be precluded from offering any opinions and/or testimony by Ms. Benaman at the hearing in this matter beginning on December 3, 2024.

Respectfully Submitted,

s/ Jennifer L. Lewis

GENTNER DRUMMOND, OBA #16645

*Attorney General*

GARRY M. GASKINS, II, OBA #20212

*Solicitor General*

JENNIFER L. LEWIS, OBA #32819

*Deputy Attorney General*

OFFICE OF ATTORNEY GENERAL

STATE OF OKLAHOMA

313 N.E. 21st Street

Oklahoma City, OK 73105

Direct: (405) 521-3921

jennifer.lewis@oag.ok.gov

M. David Riggs, OBA, #7583

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to summarize or support them; (iv) the witness’s qualifications, including a list of all publications authored in the previous 10 years; (v) a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and; (vi) a statement of the compensation to be paid for the study and testimony in the case.”

Kristopher E. Koepsel, OBA #19147  
Riggs, Abney, Neal, Turpen, Orbison &  
Lewis  
502 West 6th Street  
Tulsa, OK 74119  
(918) 587-3161

Robert A. Nance, OBA #6581  
W.A. Drew Edmondson, OBA #2628  
Riggs, Abney, Neal, Turpen, Orbison &  
Lewis  
528 N.W. 12th Street  
Oklahoma City, OK 73103  
(405) 843-9909

Louis W. Bullock, OBA #1305  
Bullock Law Firm PLLC  
110 W. 7th Street  
Tulsa, OK 74119  
(918) 584-2001

Frederick C. Baker, admitted *pro hac vice*  
Cynthia Solomon, admitted *pro hac vice*  
Kristin Hermiz, admitted *pro hac vice*  
Madeline Becker, admitted *pro hac vice*  
Motley Rice LLC  
28 Bridgeside Boulevard  
Mount Pleasant, SC 29464  
(843) 216-9186

*Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 22nd day of November 2024, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the ECF registrants with entries of appearance filed of record.

*s/ Jennifer L. Lewis*

Jennifer L. Lewis